

No. 15019

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United States  
Court of Appeals  
for the Ninth Circuit

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JAMES MEREDITH, Appellant,  
vs.

RICHARD MEREDITH SCRUGGS, CAROL  
ELIZABETH SCRUGGS, ATLEE GAIL  
SCRUGGS, MERI-JO ABRAMS and LOUIS  
EDMUND ABRAMS, Appellees.

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Transcript of Record

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Appeal from the United States District Court for the  
District of Hawaii

FILED

MAR 20 1956

PAUL P. O'BRIEN, CLERK



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Court of Appeals  
for the Ninth Circuit

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vs.

RICHARD MEREDITH SCRUGGS, CAROL  
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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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## NAMES AND ADDRESSES OF ATTORNEYS

For the Appellant:

ROBERTSON, CASTLE & ANTHONY,

By THOMAS M. WADDOUPS,

312 Castle & Cooke Building,

Honolulu, Hawaii.

For the Appellees:

ARTHUR K. TRASK,

177 South Queen Street,

Dillingham Building Annex,

Honolulu, Hawaii.

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DEPARTMENT OF THE HISTORY OF ARTS AND ARCHITECTURE

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In the District Court of the United States for the  
District of Hawaii

Civil No. 1444

RICHARD MEREDITH SCRUGGS, CAROL  
ELIZABETH SCRUGGS, ATLEE GAIL  
SCRUGGS, MERI-JO ABRAMS and LOUIS  
EDMUND ABRAMS, Plaintiffs,

vs.

JAMES MEREDITH, Defendant.

### COMPLAINT

Plaintiffs Richard Meredith Scruggs, Carol Elizabeth Scruggs, Atlee Gail Scruggs, Meri-Jo Abrams and Louis Edmund Abrams complain of James Meredith, defendant above named, and respectively show as follows:

#### I.

Plaintiffs are all minors; Richard Meredith Scruggs and Carol Elizabeth Scruggs are residents of the State of California, and bring this action through Louis J. Abrams, their guardian ad litem; Atlee Gail Scruggs, Meri-Jo Abrams and Louis Edmund Abrams are residents of the Territory of Hawaii, and bring this action through Louis J. Abrams, their guardian ad litem; defendant is a resident of the State of Louisiana.

#### II.

At all times herein mentioned, the United States of America was the owner of a certain motor ve-

hicle, to-wit: a 1952 Fargo Truck, bearing United States Government registration license No. 95-03487; on the 5th day of August, 1953, said owner did permit and authorize defendant to drive said motor vehicle, and defendant did so drive said motor vehicle in a general ewa direction on Kalaniana'ole Highway, a public street in Honolulu, City and County of Honolulu, Territory of Hawaii, in a heedless, careless, reckless and negligent manner, without regard for the lives and safety of others who might be using said highway in the vicinity of No. 5312 Kalaniana'ole Highway.

### III.

At the said time and place Elizabeth Cox Abrams, mother of plaintiffs, was a passenger in a motor vehicle being driven by her husband, Louis J. Abrams (father of plaintiffs Meri-Jo Abrams and Louis Edmund Abrams and stepfather of plaintiffs Richard Meredith Scruggs, Carol Elizabeth Scruggs and Atlee Gail Scruggs), and defendant, so operating said motor vehicle in a reckless and negligent manner as aforesaid, caused the same to come into contact with the motor vehicle then being driven by said Louis J. Abrams with great force and violence, thereby inflicting upon said Elizabeth Cox Abrams numerous and multiple serious injuries, some of which are permanent, and requiring extensive surgery, medical attention and hospitalization.

Said Elizabeth Cox Abrams has been unable to attend to her profession since May 1, 1954 until

this date as a direct and proximate result of the negligence of defendant as aforesaid, resulting in loss to plaintiffs of support, maintenance, education, nurture, care, and training which their mother would have given them during said period, all to their damage in the sum of \$106,000.00.

#### IV.

The said injuries to Elizabeth Cox Abrams have been of such nature as to have required hospitalization at a local hospital and requiring convalescence since August 5, 1953 to the date hereof; said injuries have necessitated a trip to the mainland United States to the Mayo Clinic in Rochester, Minnesota, for delicate surgery; during the said hospitalization both locally and on the mainland United States, plaintiffs were partially deprived of the association, care, attention, acts of kindness and the comfort and solace of her society;

During the period from August 5, 1953 to the date hereof, plaintiffs have been partially deprived of the association, care, attention, acts of kindness and the comfort and solace of her society, by reason of the partial disability to their mother caused by the injuries aforesaid, and plaintiffs will continue to be partially deprived of the association, care, attention, acts of kindness and the comfort and solace of her society, by reason of the permanent nature of said disability to their mother;

All of the foregoing are to the damage of plaintiffs, as they say, in the sum of \$25,000.00.

Wherefore, plaintiffs demand judgment against defendant in the sum of \$131,000.00, together with costs and such other and further relief as may be meet and just.

Dated at Honolulu, Territory of Hawaii, this 4th day of August, 1955.

/s/ LOUIS J. ABRAMS,  
Guardian ad litem of Richard Meredith Scruggs,  
Carol Elizabeth Scruggs, Atlee Gail Scruggs,  
Meri-Jo Abrams and Louis Edmund Abrams,  
Plaintiffs.

Duly Verified.

[Endorsed]: Filed August 4, 1955.

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[Title of District Court and Cause.]

### MOTION TO DISMISS

The defendant moves the Court as follows:

To dismiss the action because the complaint fails to state a claim against defendant upon which relief can be granted.

Dated: Honolulu, Hawaii, August 23rd, 1955.

/s/ THOMAS M. WADDOUPS,  
Attorney for Defendant  
ROBERTSON, CASTLE & ANTHONY,  
Of Counsel

Acknowledgment of Service attached.

[Endorsed]: Filed August 23, 1955.

[Title of District Court and Cause.]

ANSWER

Comes now James Meredith, defendant above named, and in answer to complaint herein, respectfully shows:

1. That he is without sufficient information to form a belief as to the truth of paragraph I of said complaint and leaves plaintiffs to their proof thereof.

2. That he is without sufficient information to form a belief as to the truth of the allegations of ownership of the vehicle mentioned in paragraph II of the complaint, admits that he was driving it on August 5, 1953, but denies that he was in any way heedless, careless, reckless or negligent in the manner of its operation.

3. That he is without sufficient information to form a belief as to the truth of the allegations of family relationship contained in paragraph III of the complaint and leaves plaintiffs to their proof thereof; denies all allegations of reckless negligence or carelessness contained in said complaint; and denies the remainder of paragraph III of said complaint.

4. That he is without sufficient information to form a belief as to the truth of the balance of said complaint and leaves plaintiffs to their proof thereof.

5. That all matters contained in said complaint which are not specifically herein admitted are denied.



## First Defense

That the proximate cause of any injuries sustained by the alleged mother of plaintiffs, and hence any damage suffered by plaintiffs, was the negligence and carelessness of Louis Abrams, father or step-father of plaintiffs, which as a matter of law must be imputed to said plaintiffs and bar a recovery by them.

Wherefore, defendant prays that upon a hearing hereof the complaint be dismissed and he go hence with his costs.

Dated: Honolulu, Hawaii, October 5th, 1955.

/s/ THOMAS M. WADDOUPS,  
Attorney for Defendant

ROBERTSON, CASTLE & ANTHONY,  
Of Counsel

Acknowledgment of Service attached.

[Endorsed]: Filed October 5, 1955.

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[Title of District Court and Cause.]

## RULING ON MOTION TO DISMISS

This is an action brought by minor children for loss of support, maintenance, education, nurture, care, training, attention, acts of kindness, comfort, and solace proximately resulting from a direct personal injury to the mother caused by the negligent act of the defendant. The defendant moved to dismiss the complaint for failure to state a claim upon

which relief can be granted. The precise question presented is whether a minor child has a cause of action for damages resulting from the impairment of rights arising out of the family relationship which have been destroyed or defeated by a wrongdoing third party.

Diversity jurisdiction sustains this cause, and Hawaiian law governs. Under Hawaiian law this is a case of first impression. However,

“\* \* \* because such rights have not heretofore been recognized, is not a conclusive reason for denying them. They will be denied if it appears that the state court has spoken and denied them. If said rights have not been denied in the state court, we see no reason why the Federal Courts should be more prone to deny them or to grant them than a state court. If the state courts have not acted, we are free to take the course which sound judgment demands. In the absence of a state court ruling our duty is tolerably clear. It is to decide, not avoid, the question.”

*Daily vs. Parker*, 152 F.2d 174, 177 (7 Cir. 1945.)

The basic Hawaiian case recognizing a common law cause of action involving the family is *Kake vs. Horton*, 2 Haw. 209 (1860). In that case, the Court held that a wife can maintain a cause of action to recover for consequential damages resulting to her by reason of the death of her husband caused by the wrongful act of the defendant. She was allowed to recover for loss of support and de-

privation of the society, comfort, and fellowship of her husband. The Hawaii common law was further developed in the case of *Ferreira vs. Honolulu R.T. & L. Co.*, 16 Haw. 615 (1905). The law of the *Kake* case was extended and a father was allowed to recover for the death of a minor child. The Court said:

“It is true that in the cases cited the actions were by widows for the deaths of their husbands, but the reasoning upon which the decisions were based is equally applicable to actions by parents for the deaths of their children.”

16 Haw. at 628. Acts of kindness and attention were sanctioned factors in calculating damages in this case. In *Hall vs. Kennedy*, 27 Haw. 626 (1923), the Court refused to allow the parents to recover for the death of an adult child upon whom they were dependent. The Court reasoned:

“In *Kake vs. Horton*, the court, owing to the statute then in vogue, doubtless was authorized in allowing the widow to maintain her action for, in addition to the power vested in the court by that broad statute, a husband is bound by law to support his wife, and the legal right of the wife for such support was infringed by the wrongful act of the defendant. The same may be said of the *Ferreira* case for, since by law a father is entitled to the earnings of his son during the son’s minority, a right of action may be maintained by the father against one who, by causing the son’s death, deprives the father



of that legal right. Where, however, no legal right is infringed, no right of action may be maintained. Upon reaching majority a child is under no legal duty of supporting his parent and the parent has no legal claim upon the earnings of his child after majority. In the instant case it is asserted that the deceased was the sole support of plaintiffs, but no legal duty or obligation was on deceased to support plaintiffs."

27 Haw. at 629, 630. This case defined one of the bounds of the common law cause of action and precluded a plaintiff whose claim was based on the death of an adult child from recovering damages despite the factor of dependency. In *Gabriel vs. Margah*, 37 Haw. 571 (1947), the Court, following *Kake and Ferreira*, awarded the parents damages for the loss of association, comfort, and presence of the deceased minor child.

"\* \* \* the cause of action \* \* \* is based upon the statutory legal incidents of the relation pre-existing between the plaintiff and the deceased and the reciprocal legal rights and duties of the parties attached to such relations."

37 Haw. at 577. In *Wilscam vs. United States*, 76 F. Supp. 581 (1948), this Court awarded damages to compensate for the parents' loss of association, comfort and presence of the deceased minor child on the authority of the *Gabriel* case.

The statutory law of Hawaii dealing with the family relationship begins in 1923 with the enactment of the wrongful death act, Act. 245, S.L.

1923. This act was intended to take care of the very situation presented in the Hall case, and recognized a cause of action based exclusively on dependency. The question of whether the wrongful death act repealed the common law cause of action was answered affirmatively in *Globe Indemnity Co. vs. Araki*, 32 Haw. 153 (1931). However, this holding was discarded in the Gabriel case, in which the Court said:

“\* \* \* it was decided by a divided court by way of obiter dictum that the death statute abrogated the common-law remedy for death by a wrongful act but we do not consider the decision in that case to have any binding effect and refuse to adopt the reasoning there advanced for the conclusion reached.”

37 Haw. at 580. In *Enos vs. Motor Coach Co.*, 34 Haw. 5 (1936), the parents and minor sisters of the deceased brought an action under the wrongful death act for damages arising from the loss of care, attention and acts of kindness, comfort, solace of his society, his counsel and advice. The trial court's order sustaining the demurrer was reversed and Hawaii's highest court held that “such acts and conduct are ‘circumstances’ which the court may take into consideration in assessing damages” in a wrongful death act action. In *Young vs. Hon. C. & D. Co.*, 34 Haw. 426 (1938), the father and minor brothers and sister brought suit for damages resulting from the wrongful death of an adult son and brother under the wrongful death act. The opinion recognized the difference between a statu-

tory action and a common law action predicated upon pre-existing reciprocal rights and duties within the family unit. 34 Haw. at 451, 452. This case indeed adds strength to the Hall case for if it could have stood on the common law it would not have been reversed and remanded for further proof of statutory dependency. Taken as a unit, the Hall and Young cases limit in scope the common law action as to consequential damages for loss of care, nurture, and the like. The Hawaiian courts permit such suits only in instances where a recognized legal duty within the family relationship exists between the party bringing the action and the injured party. This excludes actions based upon the relationship of parent and adult child, adult brother-sister and minor brother-sister, or minor brother-sister and minor brother-sister.

In 1953, the legislature amended Chapter 221 of the Revised Laws of Hawaii by Act 206, an act to provide for the survival of tort actions for physical injury or death, where the wrongdoer or other person liable dies. Section 10494 [J. F. Mc] reads:

“All rights of action arising out of physical injury to the person and rights of action arising out of the death of a person by wrongful act in favor of his dependents or in favor of persons toward whom the deceased occupied the relationship of husband, wife, parent or minor child, shall survive notwithstanding the death of the wrongdoer or any other person who may be liable for damages for such physical injury or death.”

In January, 1955, in *Ginoza vs. Takai Electric Co.*, 40 Haw. 691, where the wife and minor children sought damages under the wrongful death act for the death of the husband and father, the Court permitted the wife to recover for loss of support and well being and allowed the children to recover for the loss of support, maintenance, education, nurture, care and training. Later this year the Hawaiian legislature passed Act 205 effective May 27, 1955, which incorporates all of the protections previously accorded members of the family under the common law as well as the statutes, and, in addition, gave initial recognition to the survival of tort actions where the injured person dies. Furthermore, all the elements of damages recognized both in common law and statutory cases are now specifically spelled out. The pertinent parts of the act read:

“In any such action under this section, such damages may be given as under the circumstances shall be deemed fair and just compensation, with reference to the pecuniary injury and loss of love and affection, including (a) loss of society, companionship, comfort, consortium or protection, (b) loss of marital care, attention, advice or counsel, (c) loss of filial care or attention or (d) loss of parental care, training, guidance or education suffered as a result of the death of the person by the surviving spouse, children, father, mother, and by any person wholly or partly dependent upon the deceased person.”

The foregoing review indicates very clearly that



Hawaii intends to protect all legal interests of the family. The decided cases to date to be sure have all been wrongful death cases. However, the cause of action is not founded upon the degree or quantity of the loss. Rather is it premised upon an invasion of a right. So it is that both logic and the law agree that redress may be had for a temporary impairment as well as for the total destruction of a right incident to the family relationship.

This Court is aware of the practical difficulties adverted to in 83 Penn. Law Review 276-277. However, these difficulties have been more than amply and satisfactorily disposed of in 20 Cornell Law Quarterly 255-257. In other jurisdictions the courts are not in accord as to the existence of the cause of action in behalf of a wife or minor child for damages resulting from deprivation of rights arising from the family relationship. Cases recognizing the cause of action include: *Daily vs. Parker*, supra, causing father to desert home; *Russick vs. Hicks*, 85 F. Supp. 281 (Mich. 1949), causing mother to desert home; *Hitaffer vs. Argonne Co., Inc.*, 87 U.S. App. D.C. 57, 183 F.2d 811, 23 A.L.R. 2d 1366 (1950), negligent injury to husband; *Miller et al., vs. Monsen*, 228 Minn. 400, 37 N.W. 2d 543 (1949), enticing mother from home; *Johnson, et al., vs. Luhman*, 330 Ill. App. 598, 71 N.E. 2d 810 (1947), alienation of affection of father. Contra: *Morrow vs. Yannantuono*, 152 Misc. 134, 273 N.Y.S. 912 (1934), enticing mother away from home; *Eschenbach vs. Benjamin*, 195 Minn. 378, 263 N.W. 154 (1935), negligent injury to husband-father; *McMillan vs. Taylor*, 81 U.S. App. D.C. 322, 160 F.2d 221 (1946), enticing

mother away from home; *Taylor vs. Keefe*, 134 Conn. 156, 56 A. 2d 768 (1947) alienation of mother's affection; *Edler vs. MacAlpine-Downie*, 86 U.S. App. D.C. 97, 180 F.2d 385 (1950), enticing father from home; *Hill, et al., vs. Sibley Memorial Hospital*, 108 F. Supp. 739 (D.C. 1952), negligent injury to wife-mother. In the *Hill* case, Judge Youngdahl said:

"The common law should continually be re-appraised and reinterpreted to meet changing circumstances. This Court confesses that it has been difficult for it on the basis of natural justice to reach the conclusion that this type of an action will not lie. When a child loses the love and companionship of a parent it is deprived of something that is indeed valuable and precious. Courts should ever be alert to widen the circle of justice to conform to the changing needs and conditions of society. At the same time a lower court should be cautious in laying down a completely new rule in the light of prior holdings of our Court of Appeals indicating hesitancy to extend the right of recovery of damages for such loss to a child. If there is to be any change in that doctrine this Court does not feel that it should be the one to initiate it."

108 F. Supp. at 741. It is significant that *Hitaffer*, which recognized a cause of action in the wife, was decided later than *Edler* and *McMillan*, on which Judge Youngdahl relied as indicating the trend in the District of Columbia.

In Hawaii, both by the common law and statute, loss of support, maintenance, education, nurture, care, training, attention, acts of kindness, comfort and solace are recognized factors in computing damage to the injured right incident to the family relationship. Indeed, the cases reveal that Hawaii has led the country in upholding the cause of action in this area and I see no reason why the trend in Hawaii should stop now.

I therefore hold that the complaint states a cause of action upon which relief can be granted, in accordance with my oral ruling rendered on September 19, 1955.

Motion denied.

Dated: Honolulu, Hawaii, October 19, 1955.

/s/ J. FRANK McLAUGHLIN,  
United States District Judge

[Endorsed]: Filed October 19, 1955.

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[Title of District Court and Cause.]

### VERDICT

We, the Jury in the above entitled cause, find in favor of the Plaintiff, Atlee Gail Scruggs, and assess her damages at the sum of Three Thousand and No/100 Dollars (\$3,000.00).

Dated, this 7th day of December, 1955.

/s/ SUSIE VAN CULIN,  
Foreman

[Endorsed]: Filed December 7, 1955.

[Title of District Court and Cause.]

### VERDICT

We, the Jury in the above entitled cause, find in favor of the Plaintiff, Richard Meredith Scruggs, and assess his damages at the sum of Five Hundred and no/100 Dollars (\$500.00).

Dated, this 7th day of December, 1955.

/s/ SUSIE VAN CULIN,  
Foreman

[Endorsed]: Filed December 7, 1955.

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[Title of District Court and Cause.]

### VERDICT

We, the Jury in the above entitled cause, find in favor of the Plaintiff, Carol Elizabeth Scruggs and assess her damages at the sum of Five Hundred and no/100 Dollars (\$500.00).

Dated, this 7th day of December, 1955.

/s/ SUSIE VAN CULIN,  
Foreman

[Endorsed]: Filed December 7, 1955.



[Title of District Court and Cause.]

VERDICT

We, the Jury in the above entitled cause, find in favor of the Plaintiff, Meri-Jo Abrams, and assess her damages at the sum of Three Thousand and no/100 Dollars (\$3,000.00).

Dated, this 7th day of December, 1955.

/s/ SUSIE VAN CULIN,  
Foreman

[Endorsed]: Filed December 7, 1955.

---

[Title of District Court and Cause.]

VERDICT

We, the Jury in the above entitled cause, find in favor of the Plaintiff, Louis Edmund Abrams, and assess his damages at the sum of Three Thousand and no/100 Dollars (\$3,000.00).

Dated, this 7th day of December, 1955.

/s/ SUSIE VAN CULIN,  
Foreman

[Endorsed]: Filed December 7, 1955.

In the United States District Court for the  
District of Hawaii

Civil No. 1393

ELIZABETH COX ABRAMS and LOUIS J.  
ABRAMS, Plaintiffs,

vs.

JAMES MEREDITH, Defendant.

Civil No. 1444

RICHARD MEREDITH SCRUGGS, CAROL  
ELIZABETH SCRUGGS, ATLEE GAIL  
SCRUGGS, MERI-JO ABRAMS, and LOUIS  
EDMUND ABRAMS, Plaintiffs,

vs.

JAMES MEREDITH, Defendant.

### JUDGMENT

The above entitled actions having been tried before the Honorable J. Frank McLaughlin, and a jury, and on the 7th day of December, 1955 the jury having rendered a verdict in favor of the plaintiff Elizabeth Cox Abrams and against the defendant James Meredith, in the sum of \$40,000.00; and the jury having rendered a verdict in favor of the plaintiffs Richard Meredith Scruggs and Carol Elizabeth Scruggs and against the defendant James Meredith in the sum of \$500.00 to each of said plaintiffs; and the jury having rendered a verdict

in favor of the plaintiffs Atlee Gail Scruggs, Meri-Jo Abrams and Louis Edmund Abrams and against the defendant James Meredith in the sum of \$3,000.00 to each of said plaintiffs; and the jury not having rendered a verdict in favor of plaintiff Louis J. Abrams; it is

Ordered, Adjudged and Decreed that:

1. Plaintiff Elizabeth Cox Abrams recover of defendant the sum of \$40,000.00, and her costs of action;

2. Plaintiffs Richard Meredith Scruggs and Carol Elizabeth Scruggs each recover of defendant the sum of \$500.00, and their costs of action;

3. Plaintiffs Atlee Gail Scruggs, Meri-Jo Abrams and Louis Edmund Abrams each recover of defendant the sum of \$3,000.00, and their costs of action;

4. Plaintiff Louis J. Abrams recover nothing of defendant.

Dated: December 16th, 1955 at Honolulu, T. H.

By the Court:

/s/ WM. F. THOMPSON, JR.,  
Clerk

Approved as to Form:

/s/ THOMAS M. WADDOUPS,  
Attorney for Defendant

[Endorsed]: Filed December 16, 1955.

[Title of District Court and Cause No. 1444.]

### MOTION FOR NEW TRIAL

Defendant moves the Court that a new trial be granted upon the following grounds:

1. That the verdict of the jury is contrary to law and contrary to the evidence;

2. That there was no evidence that during the period between the time of the injury and the date of the verdict the two Scruggs children, who were on the mainland, were in a position to receive any acts of kindness, attention or other participation in the family unit which would give them a cause of action;

3. That there was no evidence upon which a jury could base any monetary loss as to any of the children because the evidence showed affirmatively that they were in a position to receive more of their mother's attention since her injury than they did before;

4. That there is now pending in the First Circuit Court of the Territory of Hawaii, in Civil No. 1409, a motion which will permit the Territorial Courts to decide what law will govern the Territory, and in the event the Court's ruling is adverse to that of this Honorable Court's ruling on motion to dismiss herein, it will be an indication of the views of the Territorial Courts on the subject. In the event the Territorial Court rules that no cause of

action exists in such cases, that ruling will be made a ground for the granting of this motion.

Dated: Honolulu, Hawaii, December 23, 1955.

/s/ THOMAS M. WADDOUPS,  
Attorney for Defendant

ROBERTSON, CASTLE & ANTHONY,  
Of Counsel

Acknowledgment of Service attached.

[Endorsed]: Filed December 27, 1955.

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[Title of District Court and Cause No. 1444.]

ORDER DENYING MOTION FOR NEW  
TRIAL

The motion for new trial having come on duly to be heard,

It Is Hereby Ordered that the motion is denied.

Dated: Honolulu, Hawaii, January 6, 1956.

/s/ J. FRANK McLAUGHLIN,  
Judge of the Above Entitled Court

Attest:

/s/ WM. F. THOMPSON, JR., Clerk

[Endorsed]: Filed January 6, 1956.

[Title of District Court and Cause No. 1444.]

### NOTICE OF APPEAL

Notice Is Hereby Given that James Meredith, defendant above named, hereby appeals to the United States Court of Appeals for the Ninth Circuit from the final judgment entered in this action on December 16, 1955.

Dated: Honolulu, Hawaii, January 6th, 1956.

/s/ THOMAS M. WADDOUPS,  
Attorney for Defendant

ROBERTSON, CASTLE & ANTHONY,  
Of Counsel

Acknowledgment of Service attached.

[Endorsed]: Filed January 6, 1956.

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[Title of District Court and Cause No. 1444.]

### BOND FOR COSTS ON APPEAL

Know All Men By These Presents:

That James Meredith, defendant above named, by his attorney Thomas M. Waddoups, hereby acknowledges himself to be bound to pay to Richard Meredith Scruggs, Carol Elizabeth Scruggs, Atlee Gail Scruggs, Meri-Jo Abrams and Louis Edmund Abrams, plaintiffs, the sum of Two Hundred Fifty Dollars (\$250).



The Condition of this bond is that whereas the defendant has filed an appeal to the Court of Appeals for the Ninth Circuit by notice of appeal filed January 6, 1956 from the judgment of this Court entered December 16, 1955, if the defendant shall pay all costs adjudged against him if the appeal is dismissed or the judgment affirmed or such costs as the appellate court may award if the judgment is modified, then this bond is to be void, but if the defendant fails to perform this condition, payment of the amount of this bond shall be due forthwith.

There is deposited herewith in cash with the Clerk of Court for the United States District Court for the District of Hawaii the sum of Two Hundred Fifty Dollars (\$250) as surety for said bond.

Dated: Honolulu, Hawaii, January 6th, 1956.

JAMES MEREDITH,

/s/ By THOMAS M. WADDOUPS,

His Attorney

Verification

Territory of Hawaii,  
City and County of Honolulu—ss.

Comes now Thomas M. Waddoups, attorney for James Meredith, defendant above named, and states that he is attorney of record for said James Meredith and signs the foregoing bond in his behalf.

/s/ THOMAS M. WADDOUPS,

Subscribed and sworn to before me this 6th day of January, 1956.

[Seal]            /s/ CHARLES Y. [Illegible]  
Notary Public, First Judicial Circuit, Territory of  
Hawaii.

Acknowledgment of Service attached.

[Endorsed]: Filed January 6, 1956.

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[Title of District Court and Cause.]

### DOCKET ENTRIES

1955

Aug. 4—Motion for Appointment of Guardian Ad Litem for Infant Plaintiffs and Order Appointing Guardian Ad Litem for Infant Plaintiffs filed. Complaint filed. Summons issued. Two copies of pleadings certified and issued for service. Marshal's returns filed (served T. H. Treasurer).

Aug. 8—Notice of Service filed.

Aug. 9—Demand for Trial by Jury filed.

Aug. 18—Stipulation filed 9-1-55.

Aug. 23—Motion to Dismiss and Memorandum filed.

Sept. 16—Entering proceedings at hearing on Motion to Dismiss—Remarks by Court—Argument by Waddoups—Argument by Trask—Continued to Sept. 19, 1955 at 9 a.m. for further hearing.



1955

- Sept. 19—Entering proceedings at further hearing on Motion to Dismiss—Argument by Trask continued—Closing argument by Waddoups—Remarks by Court—Oral Ruling—Motion to Dismiss Denied—To file written ruling—Allowed two weeks to answer or otherwise plead.
- Sept. 20—Reporter's transcript Oral Ruling filed.
- Oct. 3—Entering order—Defense allowed additional two days to file answer, etc.
- Oct. 5—Answer filed.
- Oct. 10—Entering order—agreement counsel consolidated with Civil 1393 for Trial—Waddoups to file third party complaint, etc.
- Oct. 19—Waiver filed—Motion to Bring in Third-Party Defendant and Notice filed—Ruling on Motion to Dismiss filed—McLaughlin—Denied.
- Oct. 20—Entering Order—Trial reset for Nov. 7, 1955 at 9 a.m., etc.
- Oct. 21—Entering proceedings at hearing on motion to bring in third party defendant—Arguments by Waddoups—Trask and Waddoups taken under advisement.
- Nov. 4—Ruling Upon Motion to Bring in Third-Party Defendant filed. McLaughlin—Denied.
- Nov. 7—Entering proceedings at Trial—Jury—see Civil 1393.

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Nov. 8—Entering proceedings at Trial—Jury—  
see Civil 1393.

Nov. 10—Entering proceedings at Trial—Jury—  
see Civil 1393.

Nov. 14—Entering proceedings at Trial—Jury—  
see Civil 1393.

Nov. 15—Entering proceedings at Trial—Jury—  
see Civil 1393.

Nov. 16—Entering proceedings at Trial—Jury—  
see Civil 1393.

Nov. 21—Entering proceedings at Trial—Jury—  
see Civil 1393.

Nov. 22—Entering proceedings at Trial—Jury—  
see Civil 1393.

Nov. 23—Entering proceedings at Trial—Jury—  
see Civil 1393.

Nov. 25—Entering proceedings at Trial—Jury—  
see Civil 1393.

Nov. 28—Entering proceedings at Trial—Jury—  
see Civil 1393.

Nov. 29—Entering proceedings at Trial—Jury—  
see Civil 1393.

Dec. 1—Entering proceedings at Trial—Jury—  
see Civil 1393.

Dec. 2—Entering proceedings at Trial—Jury—  
see Civil 1393.

Dec. 6—Entering proceedings at Trial—Jury—  
see Civil 1393.

Dec. 7—Entering proceedings at Trial—Jury—  
see Civil 1393.

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- Dec. 7—Verdicts filed. Find in favor of the Plaintiff Richard Meredith Scruggs and assess his damages at the sum of Five Hundred and no/100 Dollars (\$500.00).
- Dec. 7—Find in favor of the Plaintiff Carol Elizabeth Scruggs and assess her damages at the sum of Five Hundred and no/100 Dollars (\$500.00).
- Dec. 7—Find in favor of Plaintiff, Atlee Gail Scruggs and assess her damages at the sum of Three Thousand and no/100 Dollars (\$3,000.00).
- Dec. 7—Find in favor of Plaintiff, Meri-Jo Abrams and assess her damages at the sum of Three Thousand and no/100 Dollars (\$3,000.00).
- Dec. 7—Find in favor of the Plaintiff, Louis Edmund Abrams, and assess his damages at the sum of Three Thousand and no/100 Dollars (\$3,000.00).
- Dec. 16—Judgment filed (See Civil 1393) and entered. Favor Plaintiffs Richard Meredith Scruggs \$500; Carol Elizabeth Scruggs \$500; Atlee Gail Scruggs \$3,000; Meri-Jo Abrams \$3,000; Louis Edmund Abrams \$3,000; and costs (\$36.20).
- Dec. 16—Motion for Taxation of Costs and Notice of Motion for Taxation of Costs filed (Copy).
- Dec. 27—Motion for New Trial filed.

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Dec. 27—Memo re motion for new trial filed.

Dec. 27—Entering proceedings at hearing on motion for taxation of costs (see Civil 1393).

Dec. 30—Entering proceedings at hearing on Motion for New Trial—Argument by Wad-doups—argument by Trask—Oral Ruling—Motion Denied.

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Jan. 6—Order Denying Motion for New Trial filed.

Jan. 6—Notice of Appeal filed.

Jan. 6—Bond for Costs on Appeal filed.

Jan. 6—Statement of Points on Appeal filed.

Jan. 6—Designation of Record on Appeal filed.

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[Title of District Court and Cause.]

### CERTIFICATE OF CLERK

United States of America,  
District of Hawaii—ss.

I, William F. Thompson, Jr., Clerk of the United States District Court for the District of Hawaii, do hereby certify that the foregoing record on appeal in the above-entitled cause, numbered from Page 1 to Page 50 consists of a statement of the names and addresses of the attorneys of record and of the various pleadings as hereinbelow listed and indicated:

Complaint and Summons;

Motion to Dismiss and Memorandum;

Answer;

Ruling Upon Motion to Dismiss;

Verdict—Atlee Gail Scruggs, Richard Meredith Scruggs, Carol Elizabeth Scruggs, Meri-Jo Abrams, Louis Edmund Abrams;

Motion for New Trial;

Order Denying Motion for New Trial;

Notice of Appeal;

Bond for Costs on Appeal;

Statement of Points on Appeal;

Designation of Record on Appeal;

Judgment.

I further certify that included in said record on appeal is a copy of the Docket Entries.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said District Court, this 13th day of January, 1956.

[Seal]            /s/ WM. F. THOMPSON, JR.,  
                         Clerk, U.S. District Court,  
                         District of Hawaii



[Endorsed]: No. 15019. United States Court of Appeals for the Ninth Circuit. James Meredith, Appellant, vs. Richard Meredith Scruggs, Carol Elizabeth Scruggs, Atlee Gail Scruggs, Meri-Jo Abrams and Louis Edmund Abrams, Appellees. Transcript of Record. Appeal from the United States District Court for the District of Hawaii.

Filed: January 30, 1956.

/s/ PAUL P. O'BRIEN,  
Clerk of the United States Court of Appeals for  
the Ninth Circuit.

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In the United States Court of Appeals  
for the Ninth Circuit

No. 15019

JAMES MEREDITH, Appellant,

vs.

RICHARD MEREDITH SCRUGGS, CAROL  
ELIZABETH SCRUGGS, ATLEE GAIL  
SCRUGGS, MERI-JO ABRAMS and LOUIS  
EDMUND ABRAMS, Appellees.

STATEMENT OF POINTS TO BE RELIED  
UPON ON APPEAL

Appellant intends to rely on the following points on appeal:

1. The court erred in overruling appellant's motion to dismiss since the complaint herein failed to

state a claim against appellant upon which relief could be granted.

2. The court erred in entering judgment for the appellees and against appellant since the complaint failed to state a claim upon which relief could be granted against appellant.

3. The court erred in overruling the motion to dismiss and in granting judgment for the appellees against the appellant in that minor children have no claim for relief based upon the loss of support, maintenance, education, nurture, care and training or association, care, attention, acts of kindness, comfort and solace of the society of a parent injured, where the parent survives the injury.

Dated: Honolulu, Hawaii, January 14, 1956.

/s/ THOMAS M. WADDOUPS,  
Attorney for Appellant

ROBERTSON, CASTLE & ANTHONY,  
Of Counsel

[Endorsed]: Filed January 25, 1956. Paul P. O'Brien, Clerk.

[Title of U. S. Court of Appeals and Cause.]

### DESIGNATION OF RECORD

Appellant hereby designates the following portions of the record to be printed on appeal in the above entitled cause:

1. Complaint.
2. Motion to Dismiss.
3. Ruling on motion to dismiss filed October 19, 1955.
4. Answer.
5. Verdict in favor of Atlee Gail Scruggs rendered December 7, 1955.
6. Verdict in favor of Richard Meredith Scruggs rendered December 7, 1955.
7. Verdict in favor of Carol Elizabeth Scruggs rendered December 7, 1955.
8. Verdict in favor of Meri-Jo Abrams rendered December 7, 1955.
9. Verdict in favor of Louis Edmund Abrams rendered December 7, 1955.
10. Judgment entered December 16, 1955.
11. Motion for new trial filed December 27, 1955.
12. Order denying motion for new trial filed January 6, 1956.
13. Notice of appeal to United States Court of Appeals for the Ninth Circuit under Rule 73(b) filed January 6, 1956.



14. Bond for costs on appeal filed January 6, 1956.

15. Statement of Appellant's points on appeal dated January 6, 1956, and filed herewith.

16. Journal entries.

17. Appellant's designation of record on appeal filed in the United States District Court for the District of Hawaii January 6, 1956.

18. Appellant's statement of points to be relied on.

19. This designation of record to be printed on appeal.

Dated: Honolulu, Hawaii, January 14, 1956.

/s/ THOMAS M. WADDOUPS,  
Attorney for Appellant

ROBERTSON, CASTLE & ANTHONY,  
Of Counsel

[Endorsed]: Filed January 25, 1956. Paul P. O'Brien, Clerk.

